

REMARKS

This Supplemental Response to Non-Final Office Action is further to the Amendment in Response to Non-Final Office Action filed April 6, 2009, which was responsive to the Non-Final Office Action mailed December 4, 2008.

This Supplemental Response is being filed to present additional grounds for patentability of the claims of the present application.

In the Non-Final Office Action, the Examiner rejected claims 32-34, 36-41, and 43-46 under 35 U.S.C. § 103(a) as being unpatentable over Burbank '444 in view of U.S. Patent No. 6,716,218 to Holmes and U.S. Patent No. 4,944,741 to Hasson. Applicants note that 35 U.S.C. § 103(c)(1) reads as follows: "Subject matter developed by another person, which qualifies as prior art only under one or more subsections (e), (f), and (g) of Section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person."

In the Non-Final Office Action mailed December 4, 2008, the Examiner cited Burbank '444 as a prior art reference under 35 U.S.C. § 102(e). Applicants hereby state that Burbank '444 and the present application were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person, namely Vascular Control Systems, Inc. Applicants respectfully assert that Burbank '444 is not available prior art for a rejection under 35 U.S.C. § 103(a) because the Burbank '444 patent and the present application were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. As such, Applicants respectfully request that the rejection of claims 32-34, 36-41, and 43-46 under 35 U.S.C. § 103(a) be removed and that the claims be allowed.

Applicants respectfully request that the present Supplemental Response be entered in the present application because its entry will simplify issues for appeal, and thus satisfies one of the criteria for entry set forth in M.P.E.P. Section 714.03(a).

As it is believed that all of the rejections set forth in the Non-Final Office Action have been overcome, favorable reconsideration and allowance of the present application is earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that she telephone Applicants' attorney at (908) 689-8700 in order to overcome any additional objections that she may have.

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Respectfully submitted,

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